

Ms. Ginger Mullins  
Chief, Regulatory Branch  
Huntington District  
U.S. Army Corps of Engineers  
502 Eighth Street  
Huntington, West Virginia 25701

Ms. Amy Fox  
Director of Program Development  
Federal Highway Administration - West Virginia Division  
Geary Plaza, Suite 200  
700 Washington Street, East  
Charleston, West Virginia 25301

Subject: EPA Role for the Development of a Supplemental Environmental Impact Statement under the National Environmental Policy Act (NEPA) for the King Coal Highway, Delbarton to Belo portion, and Buffalo Mountain Surface Mine Clean Water Act (CWA) Section 404 Permit Application, West Virginia

Dear Ms. Mullins and Ms. Fox:

The U.S. Environmental Protection Agency (EPA) has received your letter of February 7, 2012 extending an invitation to EPA to become a cooperating agency with Federal Highway Administration (FHWA), the West Virginia Division of Highways (WVDOH), and the U.S. Army Corps of Engineers (USACE) in the development of the Supplemental Environmental Impact Statement (SEIS) for the King Coal Highway, Delbarton to Belo, West Virginia and Buffalo Mountain Surface Mine Clean Water Act (CWA) Section 404 Permit Application. The request for cooperating agency status is made pursuant to Council on Environmental Quality (CEQ) regulations emphasizing agency cooperation early in the NEPA process. The study is being conducted in accordance with the CEQ regulations for implementing NEPA (40 CFR 1500-1508).

The CEQ has determined that a cooperating agency has the responsibility to assist the lead agency by involvement in the NEPA process at the earliest possible time (40 CFR 1501.6). The benefits of cooperating agency engagement in the preparation of NEPA analyses include disclosing relevant information early in the analytical process and establishing a mechanism for addressing intergovernmental issues. Other benefits include fostering intra- and intergovernmental trust and a common understanding and appreciation for various governmental roles in the NEPA process, as well as enhancing agencies' ability to adopt environmental documents. EPA accepts cooperating agency involvement on this project as described herein, but recognizes that considerable work on the study has preceded announcement of the SEIS process and the proposed time schedule is notably expedited. Despite the time constraints, EPA will work to contribute effectively to the integrity and scope of this study for identification of impacts and analysis of alternatives for the proposed projects.

CEQ has identified the types of participation undertaken by a cooperating agency as including, but not limited to, engaging in the scoping process and making available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities. Our role as a cooperating agency in support of the subject SEIS will consist of providing comments on general NEPA compliance and CWA Section 404 issues as well as providing technical support in the development of the SEIS. EPA would like the opportunity to contribute in the SEIS process in the following manner:

- Identification of significant issues
- Provide technical assistance in the development of the analysis of alternatives and their environmental impact
- Provide data and rationale underlying the alternatives analysis
- Technical assistance on Environmental Justice, cumulative impacts, etc.

CEQ guidance recognizes that, while the lead agency has overall responsibility for the content of the SEIS, status as a cooperating agency should not be construed as expressing agreement with the lead agency regarding the conclusions to be drawn from the SEIS or selection of the preferred alternative. In addition, EPA has a number of independent responsibilities related to the proposed project, including our responsibilities pursuant to Section 309(a) of the Clean Air Act (CAA), Sections 402(d), and 404(b), (c) and (q) of the CWA. Consistent with CEQ guidance, while serving as a cooperating agency, we retain our independent obligations to review and comment on every draft EIS pursuant to Section 309(a) of the CAA.

EPA appreciates the opportunity to engage as a cooperating agency in the development of the documentation to satisfy the requirements of NEPA and the CWA for King Coal Highway and Buffalo Mountain Surface Mine. If you have any questions, please do not hesitate to contact me, or have your staff contact Ms. Barbara Rudnick, NEPA Team Leader, at 215-814-3322.

Sincerely,

Jeffrey D. Lapp, Associate Director  
Office of Environmental Programs